IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDCITION

CRIMINAL APPEAL NO.814 OF 1989

The State of Maharashtra ... Appellant
(Orig. complainant)

Versus

1. Dattatraya Dhondiram Jadhav
2. Ananda Dhondiram Jadhav
3. Dhondiram Nana Jadhav
4. Laxmibai Dhondiram Jadhav... Respondents
(Orig.Accused No.1 to 4)

Shri P.A. Pol, APP for the State
Mr. A.P. Mundargi Advocate for the Respondents

CORAM : D.G. DESHPANDE, & S.R. SATHE,JJ.
DATED : 11th JANUARY,2007

ORAL JUDGEMENT :- (PER S.R.SATHE,J.)

1. The State of Maharashtra has preferred this appeal against judgement and order passed by the Court of Assistant Sessions Judge, Kolhapur whereby the accused were acquitted of the offences punishable under sections 498-A, 306, 304(B) r/w. Section 34 of IPC.

2. The brief facts giving rise to this appeal are as under :-

The complainant Dattatraya Shankar Raut was residing at Khari Corner, Kolhapur alongwith his four sons, daughter Manik and wife. Marriage of Manik took place with accused No.1 on 07/07/1983. After marriage, she started residing with accused No.1 at Kolhapur. The

accused No.2 is the brother of accused No.1 and accused No.3 and 4 are the parents of accused Nos. 1 and 2. Accused No.3 was working as a Police Head Constable, while accused No.1 was working as a rickshaw driver. After marriage, when Manik returned to her maiden home, she told her parents and brothers that the accused were harassing her. They were saying that the father of Manik did not give money and articles in marriage to them and on that count, she was ill-treated. The accused were not providing proper food to her. As there was dispute between Manik and her in-laws, accused No.1 and Manik started residing separately. However, again after some days, they started residing together.

3. It was the desire of the accused persons that Shyamrao, second son of the complainant should perform marriage with the daughter of accused Nos. 3 and 4. However, the said proposal was not approved and liked by Manik. As a result of the same, she did not take any initiative with regard to said proposal and as a result of the same, accused persons got annoyed. The accused No.1 was also asking the complainant to give Rs. 10,000/- to him for purchase of rickshaw. As the complainant expressed his inability to do so, the accused got annoyed. When the marriage of Shyamrao was

to take place the complainant requested the accused to send Manik to their house for about 8 days, however, the accused persons refused. All of them attended the marriage only for one day. At the time of said marriage, the complainant had given golden chain and clothes to the accused No.1 However, the accused No.1 insisted that the complainant should give more gold and clothes to all. The accused No.1 refused to take articles offered to him and left the function without taking lunch. In the month of March-1984, Manik was pregnant. On 10/03/1984, some relative of complainant had expired and as such Mohan, youngest son of the complainant had gone to the house of the accused to bring Manik for attending Daka function, however, the accused refused to send Manik.

4. On 12/03/1984, at about 3.00 am, the accused Nos. 1 and 2 went to the house of the complainant and asked the complainant as to whether Manik had come to their house. They told them that she had not come. The accused Nos. 1 and 2 told the complainant that Manik is missing. Then all of them started searching Manik. At about 5.00 am, they found dead body of Manik floating in Rankala Lake at Kolhapur.

5. The accused No.3 then went to Rajwada Police Station and gave information to Police that his daughter-in-law has committed suicide. Police, therefore, registered the case as No.AD-17/84. Police then went to the Rankala Lake and took the dead body out of the lake and drew inquest panchanama. The dead body was then sent for postmortem to CPR Hospital, Kolhapur. After the postmortem, Doctor opined that the death was caused due to asphyxia, due to drowning associated with sulphuric acid poisoning as per viscera report. This was of course a final opinion given on receipt of viscera report. Initially, Doctor had opined that it was a case of death by drowning. Subsequently, it transpired that there was some mistake in giving viscera report and the viscera of some other person was wrongly shown as the viscera taken at the time of postmortem of Manik. Police recorded statements of various witnesses. As they did not find any offence being committed, no further action was taken by Police. However, four months thereafter, son of the complainant sent one letter to Minister and made a complaint against Police. The investigation was, therefore handed over to CID. Police from the said department again recorded statements of various witnesses. They also recorded complaint of Dattatraya Shankar Raut, father

of deceased Manik and on that basis, registered offence at C.R. No.105 of 1986 against the accused Nos. 1 to 4 for the offences mentioned above.

6. After completion of the investigation, Police submitted charge-sheet against the accused Nos. 1 to 4 in the Court of JMFC, Kolhapur. Finding that, the accused were charge-sheeted for the offences exclusively triable by the Court of Sessions, the learned JMFC committed the case to the Sessions Court, Kolhapur.

7. The Assistant Sessions Judge, Kolhapur initially framed charge under section 498-A and 306 r/w. Section 34 of IPC. Subsequently, additional charge under section 304(B) r/w. 34 of IPC was also framed against all the accused. The charge was read over and explained to the accused. All the accused pleaded not guilty and claimed to be tried. Their defence was of total denial. They contended that even after the death of Manik, the complainant had not made any grievance or allegation against the accused but after realizing that they may not get ornaments which were found on the person of Manik at the time of death, with a view to obtain the said ornaments the complainant filed a false

case.

8. In order to prove the charge levelled against the accused, the Prosecution examined in all 11 witnesses consisting of PW-1 Dr.Hira Kumbhar Exh-21 who did the postmortem on the dead body of Manik, PW-2 complainant Dattatraya Shankar Raut Exh-28, PW-3 Asha Mulik friend of deceased Manik Exh-34, PW-4 brother of deceased Shyamrao Raut Exh-35, PW-5 another brother of deceased Mohan Raut Exh-39, PW-6 to PW-11 are all police officers connected with the investigation. The accused did not examine any witness in their defence.

9. After considering the evidence adduced by the Prosecution, the learned Trial Judge came to the conclusion that the Prosecution has failed to prove beyond reasonable doubt that deceased Manik was subjected to cruelty and that she committed suicide. The learned Trial Judge also held that there was no evidence to show that the accused abetted the commission of suicide. Nor there was evidence to show that it is the case of dowary death. The learned Trial Judge, therefore, acquitted all the accused.

10. Being aggrieved by the said order of acquittal,

the State of Maharashtra has filed the present appeal. In this appeal before us, Shri Pol, learned APP has urged only two points. Firstly, he submitted that learned Trial Judge has not properly appreciated the evidence on record and has wrongly held that there is no evidence to show that Manik was subjected to cruelty at the hands of the accused. Secondly, he canvassed before us that the learned Trial Judge ought to have considered the fact that at the relevant time, Manik was pregnant and under such circumstances, normally, she would not have committed suicide but the very fact that she committed suicide, it must be as a result of severe harassment at the hands of the accused. He, therefore, submitted that appeal be allowed and accused be convicted. As against this, Shri Mundargi, learned Senior Advocate for the accused supported the judgement and order passed by the learned trial Judge. He submitted that there is absolutely no evidence to show that Manik was subjected to cruelty as contemplated under section 498-A of IPC. Secondly, he canvassed before us that the view taken by the learned Trial Judge is reasonable and he has taken into consideration all the evidence. He, therefore, submitted that there is no need for the Appellate Court to interfere with the finding of acquittal. He, therefore, submitted that

the appeal be dismissed.

11. It not in dispute that the marriage of accused No.1 and deceased Manik had taken place on 07/07/1983 and thereafter, she started residing in the house of accused No.1 alongwith accused Nos. 2 to 4. It is also admitted that accused No.3 was working as a Police Head Constable and accused No.1 was working as rickshaw driver. Admittedly, after living in the joint family for few days, accused No.1 had started residing separately alongwith deceased Manik then again both of them started residing in the joint family. It is not in dispute that on 13/03/1984 at about 3.00 am, the accused No.1 and 2 went to the house of the complainant Dattatraya Raut and asked him as to whether Manik had come to his house. The accused Nos. 1 and 2 informed him that Manik is missing and then all of them searched Manik and at about 5.00 am dead body of Manik was found floating in the water of Rankala Lake situated at Kolhapur. Thus, we find that the death of Manik has taken place within a period of about 8 months from her marriage. Admittedly, when the dead body of Manik was found in the lake it was noticed that she was properly dressed and she was wearing even gold ornaments on her person. From P.M. Notes Exh-22, it is crystal clear

that no injuries were found on the person of Manik and Doctor had initially opined that the death of Manik was due to drowning. However, viscera was preserved and subsequently, it was reported that poison was found in viscera and hence, Doctor opined that death was caused due to asphyxia due to drowning associated with sulphuric acid poisoning as per viscera report. It is proved by the Prosecution that after the finding of the dead body in Rankala Lake the accused NO.3 had in fact informed the Police that his daughter-in-law i.e. Manik has committed suicide and on that basis, A.D. was registered.

12. As per the information given by the accused No.3 Exh-43, on the night on 11/03/1984 Manik was in the house of the accused. Not only that, accused No.1 and Manik were sleeping in the front room (sopa) of the house. So, one thing is certain that the death of Manik was not natural. Question arises, whether it was accidental, suicidal or homicidal. Under the circumstances of the case, by no stretch of imagination it can be said that the death of Manik was accidental. It may be either suicidal or homicidal.

13. There is absolutely no direct evidence to show

that Manik committed suicide. However, it is the prosecution case that Manik was ill-treated and harassed by the accused Nos. 1 to 4 and as a result of the said harassment and cruelty Manik committed suicide. An attempt was also made by the complainant and in particular by his sons to show that the accused may have even committed murder of Manik. Of course, there is no charge for the offence punishable under section 302 of IPC. All along evidence has been adduced to show that Manik was subjected to cruelty.

14. In order to prove the charge levelled against the accused the Prosecution is mainly relying on the evidence of complainant Dattatraya Raut (Exh-28) father of Manik, Manik's friend Asha Mulik Exh-34, Manik's two brothers namely Shyamrao Raut Exh-35 and Mohan Raut Exh-39. The complainant Dattatraya Raut Exh-28 has stated that in marriage of Manik he had given four tola gold ornaments to her and he made all the marriage expenses. He has also stated that at the time of Diwali he gave some ornaments of about 1 and ½ tola to Manik. However, it must be noted that even complainant has nowhere specifically stated that at the time of marriage, accused had demanded any particular amount or articles by way of dowary. Admittedly, there is nothing

on record to show that it was agreed between accused and complainant to give dowary or that any such dowary was actually given to the accused.

15. The complainant has stated that after marriage when Manik returned to her maiden home she told him that accused No.4 Manik's mother-in-law was harassing her for domestic work and accused No.1 was asking Manik to bring one or the other article and had also asked to bring amount of Rs.10,000/- for purchase of rickshaw. However, it is pertinent to note that in the earliest statement which was recorded by Police the complainant had not stated so. So, we find that the theory with regard to demand of Rs. 10,000/- and articles by the accused has been introduced subsequently and it is an after thought. What is more to be noted is that it has also come on record that amount of Rs. 10,000/- was not asked by way of dowary. It seems that as the accused No.1 was not having a rickshaw and he wanted to purchase a rickshaw it was expressed that the complainant should pay the amount for the same. Admittedly, such amount was not paid and there is nothing to establish that accused insisted for the said amount. Even the evidence of complainant's son is not sufficient to prove that the accused wanted money from

the complainant. On the contrary, it has come on record that during the time of the marriage of the complainant's son Shyamrao some gold ornaments and clothes were offered to accused No.1 but he refused to take the same. Of course, it is the case of the complainant that he refused the said ornaments because he wanted more ornaments and clothes and the complainant did not give the same. Be that as it may, the fact remains that when gold ornaments 1 ¼ tola and clothes were offered the accused did not accept the same.

16. The complainant has also stated that accused were asking Manik to carry out the household work and they used to abuse her and beat her. However, this statement of complainant is too vague. Asking the daughter-in-law to do routine household work can not be said to be causing harassment to her. Though, it is said that accused were abusing her or ill-treating her, it is very clear that neither the complainant nor other prosecution witnesses have given any details about the alleged ill-treatment or harassment. It is very easy to make a bald statement that accused were harassing or ill-treating the woman. Mere such bald statement is certainly not sufficient to find out as to whether

there was ill-treatment and cruelty as contemplated under section 498-A of IPC.

17. The Prosecution witness No.3 Asha Mulik, friend of deceased Manik has stated that after Manik's marriage with accused No.1 she accompanied Manik to the house of the accused and stayed there for 8 days. She has stated that during that period, the accused were asking her to wash clothes and carry out cooking, cleaning utensils. Now, so far as this type of work is concerned it can not be said that by asking Manik to do such work the accused had caused any ill-treatment to her. Witness Asha has also not given any details about the alleged ill-treatment or harassment. She has stated that during that period she and Manik were not even provided proper food and Manik was asked to prepare food for several persons and wash clothes of several persons. But it is pertinent to note that whatever is stated by Asha has not been stated by any family member of Manik. If really such ill-treatment was given to Manik then certainly she would have disclosed about the same to her father and brother. But we find that they have not uttered even a single word about the same. What is more to be noted is that Investigating Officer who has recorded the statement of Asha has stated that

Asha has not disclosed all this in her statement recorded by him. So, it is crystal clear that Asha has made several improvements and there are material omissions and contradictions in her testimony and as such it is not at all worthy of credence and it has been rightly rejected by the learned Trial Judge.

18. The Prosecution witness No.4 Shyamrao Raut brother of the deceased Manik has also stated that when Manik had returned from her matrimonial home, she had told that accused were harassing and demanding gold. If really Manik would have said accordingly, then certainly Shyamrao would have disclosed this fact to Police when they had come to him during the inquiry in connection with A.D. No. 17/84. But we find that at that time this witness refused to give any statement. The reason given by him that he was not feeling well at that time and was mentally disturbed can not be accepted. He has also stated that it was the desire of the accused that daughter of the accused Nos. 3 and 4 should be given in marriage to him. But this idea was not liked by Manik and as such the accused were having grievance. However, it has come on record that there was nothing wrong if the accused had expressed such desire. But we find that there is nothing to indicate

that as the said proposal did not materialize the accused had any severe grievance against Manik or that they started acting vindictively against Manik. Though, this witness has stated that when Manik had come to their house she was apprehending that she will be harassed if she would return to her matrimonial home, this is a vague statement made by the said witness and the same is not substantiated by any specific incident. He also stated that accused were in fact given to understand that they should treat Manik properly and accused had in fact assured accordingly. But, we find that the witness has not named any specific person who had intervened and before whom the accused person had given promise that they would treat Manik properly. So, the evidence of witness Shyamrao is also not cogent, consistent and sufficient to prove that Manik was subjected to cruelty as contemplated under section 498-A of IPC. Merely because the accused refused to send her to attend 'Daka' ceremony, we can not jump to the conclusion that such conduct amounts to cruelty. According to complainant and his son when woman is pregnant and if somebody dies in her relations such woman should attend 'Daka' ceremony so as to protect the child in womb. However, we find that the accused persons did not send Manik for the said ceremony. It

may be that they may not be having faith in such customs. Merely because she was not sent for the said ceremony, it can not be said that they acted with cruelty. It is pertinent to note that if really Manik would have told the complainant and her family members that the accused persons were treating her with cruelty and were harassing her then certainly when they found that Manik died in such manner they would have made specific complaint against the accused and would have informed the police about the alleged ill-treatment given by the accused to Manik. But even the complainant Dattatraya Raut Exh-28 has admitted in cross-examination that when his statement was recorded during the course of the investigation of A.D., he had told police that he was not having any suspicion against any one. Under such circumstances, it is difficult to believe subsequent version of the complainant that accused were causing cruelty and harassment to Manik. The learned Trial Judge has rightly held that the prosecution has failed to prove that Manik was subjected to cruelty.

19. Once it is said that the prosecution has failed to prove the charge under section 498-A of IPC, the question of applying the provision of section 113-A of

the Evidence Act or Section 304-B of IPC does not arise. It is true that in the instant case, the death of Manik has occurred in most suspicious circumstances. Not only that but one may say that the very fact that Manik was in the house of accused on the night of 11/03/1984 and her dead body was found in water of Rankala Lake at about 3.00 am on 12/03/1984 creates a grave suspicion about the accused. However, it is well settled that suspicion, however grave it may be, can not take place of proof. It is really most unfortunate that even after the time the Investigation in the instant case was handed over to CID, no positive evidence could be collected with regard to cause and manner of death of Manik. So far as finding of sulphuric acid is concerned, it has come on record that there was mistake on the part of Chemical Analyser and the viscera of some other person was treated as viscera of Manik. The conduct of complainant and his sons namely not making any specific grievance against accused and informing police about the alleged acts of cruelty immediately after the death of Manik and raising contention about the same after a period of about four months is most unnatural and abnormal. So, the subsequent information given by the said witnesses to Police is not at all trustworthy. The same is not

corroborated by any independent evidence. In fact, even if we accept the statement of the complainant and his son regarding the conduct of the accused and their mode of behaviour with Manik as it is, still that by itself is not sufficient to hold that the accused persons caused cruelty to Manik as contemplated under section 498-A of IPC.

20. It is needless to say that in the instant case, the provision of section 304-B of IPC is not at all applicable because the alleged incident has taken place on 12/03/1984 while this section was introduced with effect from 19/11/1986. The alleged conduct of ill-treatment is pertaining to period prior to 12/03/1984. There is absolutely no evidence to show that dowary was paid to accused or it was asked by them. There is also no evidence to show that the accused abetted the commission of suicide as tried to be suggested by the prosecution. So, we are of the considered view that the learned Trial Judge has rightly acquitted the accused. The finding recorded by the learned Trial Judge can not be said to be unreasonable, perverse or illegal. Hence, there is no necessity to interfere with the said finding in this appeal against acquittal. Hence, we pass the following order:-

O R D E R

The appeal is dismissed. The acquittal of the accused is upheld.

The bail bonds of the accused stand cancelled.

(D.G. DESHPANDE,J.)

(S.R. SATHE,J.)